

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2006-003750

03/09/2007

HON. MICHAEL O. WILKINSON

CLERK OF THE COURT
D. McGraw
Deputy

IN RE THE MATTER OF
ADAM CHRISTOPHER BLACK

CHARLES I FRIEDMAN

AND

GINA MARIE ELIZABETH ANTUONO

PAMELA CROWDER-ARCHIBALD

SUPPORT SERVICES-CCC

UNDER ADVISEMENT RULING

This matter having been under advisement, the Court makes the following findings and orders. This matter comes to the Court on two motions. Respondent has moved for a court order permitting relocation of the minor child to the State of California. She has relocated to that state and has married and wishes to have the minor child with her in California. Father has filed an Amended Petition for Child Custody, Parenting Time and Child Support.

Because an order of paternity has not been previously entered in this matter, the Court finds that it is undisputed that Petitioner/Father is the natural father of the minor child, Kailey Tristen Black (DOB: 10/19/2002), born to Gina Marie Elizabeth Antuono Bennett. His name appears on the birth certificate at this time as the natural father.

The Court has evaluated Mother's relocation to California and based on the factors as set forth in A.R.S. § 25-403:

- 1) The wishes of child's parents as to custody. Each of the parents here desires that Kailey reside primarily with them.
- 2) The wishes of the child as to the custodian. While it appears that the child has

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2006-003750

03/09/2007

expressed a desire to live with Mother, this is based on numerous conversations that Mother has had with Kailey attempting her to parrot that Kailey should live with Mother. The Court does not find a strong desire either way as to this factor.

3) The interaction and interrelationships of the child with their parents, siblings and other persons. It appears that Kailey has an extended family on her father's side with whom she has close relationships. This includes her great-grandmother, Beverly, who for over three-and-a-half years has provided care for Kailey. On Mother's side there is not a significant family for support. Kailey has had interaction in her relationships with Mother's prior fiancé, Paul Lebjo, and with her new husband, Jake Bennett. Both of these relationships have been positive, but neither provided the depth of a relationship that Kailey has on her father's side.

4) The child's adjustment to home, school and community. Kailey has had an extended time with Father and has adapted well to the home environment. As noted above, Kailey has had contact with her great-grandmother from the time she was ten months old. Since September of 2006, her great-grandmother has once again provided daycare for Kailey. It is unclear what Kailey's situation would be in California. Mother is working five days a week, but plans in the fall to additionally attend school. Mother's husband, Jake Bennett, works a significant number of hours as well.

5) The mental and physical health of all individuals involved. The findings of Dr. John DiBacco are that both parents are well within norms as to mental and physical health. While Mother may have previously experienced periods of instability and indecision as to where she wanted to live, she now appears to have stabilized her relationship with Mr. Bennett and her choice of location.

6) Which parent is more likely to allow the child frequent and meaningful continuing contact. In this regard, Mother has at times disobeyed prior interim orders when having Kailey. She kept Kailey for more than two weeks after she was ordered to return Kailey to Arizona. It appears that Mr. Black has followed all court orders.

7) Whether one parent, or the other, has provided primary care. Until September of 2006, Mother provided primary care for Kailey in the evenings. During the day Kailey was watched by either her father or her great-grandmother. Since September of 2006, Father has provided primary care of Kailey.

8) The nature and extent of coercion or duress. No extraordinary coercion or duress has been used to obtain a parenting agreement.

The Court has also examined the factors set forth in A.R.S. § 25-408:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2006-003750

03/09/2007

1. The factors of A.R.S. § 25-403. The Court has previously discussed each of these.

2. Whether the relocation is made or opposed in good faith or to frustrate the relationship between the child and the other parent. The testimony at trial was significantly different than the information given to the custody evaluator, Dr. John DiBacco. It appears that simply put, Mother moved to California to be with her new husband, Jake Bennett. Dr. DiBacco was under the misimpression that Mother went to California for schooling. Mother is not now in school and there was no evidence that the educational opportunities in California were any different than those provided in Arizona. There is no evidence that the job opportunities in her career path are better in California than Arizona.

3. The prospective advantage for improving the general quality of life for the custodial parent or the child. As stated above, there is no evidence that Mother's move to California provides an advantage in employment or in school for Mother or the child. The only advantage it provides is that Mother is with her new husband. The same educational and quality of life opportunities are available in Arizona as exist in California. Indeed, Mother has testified that the costs of living in California are significantly higher. This would mean less disposable income for the minor child. Further, the Court finds that Mother's schedule in the fall when she begins school will work a significant decrease in the quality of life for Kailey. It will mean increased time in a commercial daycare setting. On the other hand, Father's situation as to time is much more flexible because of his occupation in real estate. He also has a significant network of relatives to assist with Kailey's schedule. The quality of life for Kailey in Arizona seems significantly better in Father's situation than in Mother's.

4. The likelihood that a parent with whom the child will reside will comply with parenting time orders. As stated above, the Court has reservations about Mother's willingness to strictly adhere to court orders regarding access.

5. Whether the relocation allows a realistic opportunity for parenting time with each parent. Each parent would have similar obstacles in long-distance parenting. However, as Kailey grows older the disadvantages of the distance will disappear. The parties will be living approximately 6 hours apart from each other by car or a very short plane ride. The schedule which includes extended parenting time during the summer for the non-residential parent will allow the other parent to have a significant amount of time with their daughter.

6. The extent to which moving or not will affect the emotional, physical or developmental needs of the child. Due to Kailey's age of four-and-a-half, it is important that she have stability in her life. She has benefited from the extensive network of relatives on her father's side who are able to give her care.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2006-003750

03/09/2007

7. The motives of the parents and validity of the reasons given for moving, including financial advantage. This matter was discussed above.

8. The potential effect of relocation on the child's stability. As noted above, the home environment that Father provides for Kailey would be best suited for her at this time.

Based on all of the evidence and consideration of these factors,

IT IS ORDERED denying the Motion for Court Order Permitting Relocation of the Minor Child.

IT IS FURTHER ORDERED granting Father's Motion for Child Custody.

IT IS FURTHER ORDERED that the parties continue to exercise joint legal custody, with Father being the primary residential parent. Mother shall have parenting time every summer from one week after school gets out until one week before school commences in the Fall. In addition, Mother will have the entire Christmas vacation and Spring/Easter vacation. In addition, Mother shall be allowed one weekend visit per month extending over a holiday weekend if she chooses to exercise it. The parties shall split all costs of parenting time. They may agree to exchange the child halfway to California or to allow for flights to California. Father shall have one (1) two-week period during the summer for his summer vacation. He shall give Mother 30 days' notice of when he wishes to take his two-week summer vacation.

As to the issue of child support, the Court has considered the factors set forth in the Arizona Child Support Guidelines as set forth in the Child Support Worksheet and Child Support Order signed concurrently with this ruling which the Court hereby incorporates and adopts as its findings with respect to child support. (If counsel, or the parties if unrepresented, wish to obtain a copy of the Court's Child Support Worksheet before it reaches the court file, they may contact the Division at 602-506-3776.) Based on those factors,

IT IS ORDERED that Mother shall pay to Father as and for child support the sum of \$278.69 per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing March 1, 2007 by Wage Assignment.

IT IS FURTHER ORDERED approving and settling the formal written Child Support Order and Order of Assignment (\$278.69 current child support and \$2.25 Clearinghouse Handling Fee) signed by the Court this date. Until the wage assignment becomes effective, it is the responsibility of the party obligated to pay child support to pay the support to **Support Payment Clearinghouse, P. O. Box 52107, Phoenix, Arizona 85072-2107**. The payment should show the case number and/or ATLAS case number and the name of the party paying support and the name of

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2006-003750

03/09/2007

the party who will receive the payment. If payments are made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation. Any change in the paying party's employment and any change in the residential address of either party **must** be submitted to the Clerk's Office, in writing, within ten (10) days of the change (A.R.S. 25-322(C)). Failure to notify the Clerk's Office of any change may be considered contempt of Court.

Arizona Revised Statutes Section 25-503(I) states that, with certain exceptions, an unpaid child support judgment that became a judgment by operation of law (this means that it became a judgment when it was due and unpaid) expires three years after the emancipation of the last remaining unemancipated child who was included in the court order unless it is reduced to a formal written judgment by the court. An Obligee must apply in writing to the court to obtain a formal written judgment.

IT IS FURTHER ORDERED that counsel for Father prepare an order for the Court's signature within three weeks of the filing date of this minute entry.

FILED: Exhibit Worksheet and Child Support Worksheet.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/ssc/sschome.html>.